In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 891

ALVIN GROVER CONNER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals is reported at 322 F. 2d 647.

JURISDICTION

The judgment of the court of appeals was entered September 19, 1963. A petition for rehearing was denied February 6, 1964. The petition for a writ of certiorari was filed March 6, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether it was error not to grant a mistrial after an answer by a witness that, before he met petitioner, he assumed from conversations with others that petitioner was in the liquor business—an answer which the judge instructed the jury to disregard.

STATEMENT

Petitioner was convicted in the United States District Court for the Northern District of Georgia of conspiracy to violate the liquor laws and was sentenced to imprisonment for two years. The conviction was affirmed on appeal.

The sufficiency of the evidence is not questioned. *Inter alia*, two witnesses, Robert Eassey and William Daniel, testified to participating with petitioner and Huddleston in the manufacture and transportation of non-taxpaid liquor. Eassey testified that he worked with petitioner at a still in Douglas County in September, 1959 (R. 44-46) and with petitioner, Huddleston and Daniel at another still in Fulton County after Christmas, 1959 (R. 47-48); that he stored liquor for petitioner in early 1960 (R. 48, 54-55); and that he transported 1500-1600 gallons of liquor for petitioner from the beginning of 1960 to March 5, when he wrecked a car he was using and was told that it was stolen (R. 49-54). Daniel testified that he met petitioner in November, 1959 (R. 73), transported jars and sugar to the still in Fulton County in late December, 1959 (R. 75-76), and transported

liquor from the still in early 1960 (R. 79-81). He further testified that he had been at the still site in Douglas County only once, after it had been raided (R. 92-93), and, on cross-examination, that petitioner was not with him at that time (R. 103). On redirect examination, Daniel was asked whether he knew anything about petitioner before he had met him while working with Huddleston, and whether he had any conversation with Huddleston and Eassey concerning petitioner. Daniel answered that he "had took it" that petitioner was in the liquor business from the conversation (R. 110). Petitioner's attorney moved for a mistrial. In argument outside the presence of the jury, government counsel stated that he meant the question to relate to the period just before Daniel met petitioner (in November, 1959), while the Douglas County still was in operation (R. 114-116). The court believed that the question and answer could not be so understood (R. 117). It held that the answer to the question did not warrant a mistrial (R. 117) but directed the jury to disregard it (R. 118).

ARGUMENT

There is no merit in petitioner's contention that he should have had a mistrial because the witness Daniel said that before he met petitioner, he understood from conversations with others that petitioner was in the liquor business. Not only must it be assumed that the jury obeyed the judge's instructions to disregard the evidence (*Opper* v. *United States*, 348 U.S. 84, 95), but the statement itself was un-

important. Even if the answer could be construed as referring to petitioner's participation in the liquor business prior to the period charged in the indictment, that would add little to the overwhelming proof of guilt.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

HERBERT J. MILLER, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
Attorney.

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